IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1944 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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RAMESHKUMAR SOMABHAI VASAVA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AJ SHASTRI for Applicant(s) : 1,
MR PD BHATE ADDITIONAL PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 12/03/2007

ORAL JUDGMENT

1. By way of this petition, the petitioner has prayed to quash and set aside the criminal complaint under Section 494, 495 and 376 of Indian Penal Code, which has been lodged with Kadi Police station being C.R. No.429 of 2000.

2. The brief facts of the case are as under :

2.1 The petitioner, who is an employee of O.N.G.C. and respondent No.2, original complainant were in love and affection. It is

also case of the petitioner that respondent No.2 lodged one complaint being CR No. 429 of 2000 before Kadi Police Station for the offences punishable under Sections 494, 495 and 376 of the Indian Penal Code. As he had apprehension of arrest, he had filed anticipatory bail under Section 438 before learned Sessions Judge, Mehsana, whereby the learned Judge was pleased to allow the said application. Thereafter, the petitioner was released on regular bail under Section 439. It is also case of the petitioner that with a view to harass the petitioner, respondent No.2 filed application before the learned Civil Judge, Kadi that the petitioner gave threat. Therefore, the complaint lodged by respondent No.2 is false and frivolous. Hence, the present petition.

3. Heard the learned counsels for the parties.

4. Prima facie it is evident that the allegations, which have been made in the complaint for recovery of aforesaid amount is of civil nature. In the case of State of Haryana and Others V. Bhajanlal and Others, 1992 Supp (1) Supreme Court cases 335, the Hon'ble Apex Court has cited following categories by way of illustration, wherein the extraordinary power under Article 226 or the inherent powers under

Section 482 of Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police offer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherent improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and or where the proceeding is maliciously instituted with a view to spite him due to private and personal grudge.

6. As a result, on hearing and perused of the

record, it is found that the dispute is of civil nature and no prima facie case is made out against the petitioner. Learned advocate for the respondent has failed to point out any ingredients of the alleged offences. Therefore, the complaint becomes bad and requires to be quashed.

7. In view of the same, the complaint being C.R. No.429 of 2000 registered with Kadi Police Station punishable under Section 506 (2), 144 of Indian Penal Code is quashed and set aside. Rule made absolute.

(K.S. JHAVERI, J.)

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